

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of Joint  
Petition for Expedited  
Rulemaking Establishing  
Minimum Notice Requirements  
for Detariffed Services  
Policy and Rules Concerning  
the Interstate,  
Interexchange Marketplace,  
Implementation of Section  
254 (g) of the  
Communications Act of 1934,  
as amended.

CI Docket No. 02-22

**MOTION  
TO ACCEPT LATE-FILED COMMENTS  
(COMMENTS ATTACHED)**

The California Public Utilities Commission (California or CPUC)  
respectfully submits this Motion to Accept Late-Filed Comments in the above  
docket, Joint Petition for Expedited Rulemaking  
Establishing Minimum Notice Requirements for Detariffed  
Services in the Interstate, Interexchange Marketplace  
(Joint Comments). The Federal Communications Commission (FCC)  
issued the dates to respond to the Joint Petition on February 6, 2002. The CPUC's  
Comments were due on March 11, 2002.

Urgent situations at the CPUC have resulted in a shortage of CPUC staff  
resources. Consequently, the CPUC was unable to prepare and submit its

Comments by March 11, 2002. We ask the FCC to accept these late-filed  
Comments on the Joint Petition for Expedited Rulemaking  
Establishing Minimum Notice Requirements for Detariffed  
Services in the Interstate, Interexchange Marketplace.

Respectfully submitted,

GARY COHEN  
HELEN MICKIEWICZ  
LIONEL WILSON  
GRETCHEN DUMAS

By: /s/ GRETCHEN DUMAS

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Public Utilities Commission  
State Of California

April 11, 2002

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**COMMENTS OF THE CALIFORNIA  
PUBLIC UTILITIES COMMISSION**

The California Public Utilities Commission ("CPUC") hereby submits its comments in support of the Joint Petition seeking an expedited rulemaking to establish minimum notice requirement for recently detariffed interstate domestic toll services filed by the following Petitioners: American Association of Retired Persons, Consumer Action, Consumer Federation of America, Consumers Union, the Massachusetts Union on Public Housing Tenants, the National Association of Regulatory Utility Commissioners, the National Association of State Utility Consumer Advocates, the National Association of Consumer Agency Administrators, and the National Consumers League.

The FCC in its Second Report and Order *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254 (g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61,

*Second Report and Order, 11 FCC Rcd 20730; 4 Comm. Reg. (P&F) 1199 (Oct. 29, 1996) (FCC 96-424)* decided to forbear from requiring tariff filings by non-dominant interexchange carriers. The FCC found it was appropriate to replace regulatory requirements with market forces. The FCC also made it clear that this decision did not signify a departure from its historic commitment to protect consumers against anti-competitive practices.

The instant Petition requests the FCC to initiate an expedited proposed rulemaking (or further proposed rulemaking) to impose a minimum thirty-day notice requirement on recently detariffed interstate domestic toll service. This request has been made because the FCC's detariffing policy has had the effect of circumventing protection to customers in the competitive interstate long distance toll market. For example, customers to protect themselves would have to contact their interstate domestic toll carrier every time they were going to make an interstate long distance call to be sure the price plan agreed to in their contract with the carrier had not been changed. Clearly customers are not used to making such calls, and telephone companies are not geared up for the large amount of calls it would potentially get inquiring about price changes to their customers' contracts. Changing prices during a billing cycle with no reasonable notice is not like going to the grocery store to buy milk. In that instance, the price change is obvious before you buy the milk. In contrast, a customer in a telephone contract situation receives a bill generally on a monthly basis, and can only identify a price change after the call has been made and recorded on their bill.

Moreover, this policy is anti-competitive since rates can be changed without notice and customers are not able to choose the long distance carrier that is offering the best deal during a given thirty-day period because such a price change would go unnoticed by a customer. This policy contradicts the FCC's own stated goals that their policy be pro-consumer and pro-competition.

The remedy cited by the FCC, enforcement of state contract and consumer protection laws, as the best means to protect consumers against illegal price changes, cannot prevent the violations from occurring but only give consumers recourse when the violations have taken place. Therefore, the current lack of notice for price changes of interstate long distance toll calls fails to proactively prevent contract violations, and is thus harmful to customers and anti-competitive to other carriers. As a result, California supports the Petition's request that the FCC take a fresh look at whether it is appropriate to establish minimum notice requirements for recently detariffed services.

In the year that the FCC's detariffing policy has been in effect, the CPUC has noticed a marked increase in both written and verbal consumer complaints about price changes for interstate long distance toll service without timely notification to the customer. Until this Joint Petition was filed, the CPUC included these complaints in with the number of complaints that the CPUC receives regarding interstate services more generally. Last year, there were over 2000 such complaints. However, because the number of complaints regarding lack of notice of a price change for interstate domestic toll calls has increased so dramatically

over the past year as a result of the FCC's detariffing policy, the CPUC has begun separately tracking these complaints. The CPUC believes that expert agencies, such as the FCC and state utility commissions such as the CPUC should play an important role in these significant public policy issues. The CPUC, in its ongoing Consumer Protection Rulemaking, R.002004, is developing a Consumer Bill of Rights and rules to protect those rights for intrastate services. Specifically, the CPUC in this proceeding is implementing the notice requirements of California law.

By contrast to California law, the current FCC consumer protection rules offer a consumer no remedy when a contract price for interstate domestic toll service is changed without a consumer being given timely and adequate notice under contract law. Under the circumstances, the consumer who has received no notice regarding a price change in violation of applicable contract law is forced to take the offending telephone company to court. In the alternative, a state law enforcement agency, such as the CPUC or State Attorney General, could file an enforcement action in court against the phone company for violating applicable contract law. Moreover, a private plaintiffs' attorney could institute a class-action suit representing all consumers who are victims of such a violation of contract law.

All of these solutions, however, are problematic. Individual lawsuits against long distance service providers are impractical because of the great expense of pursuing such lawsuits. Civil enforcement actions brought by a state may have the effect of diluting a state's limited resources thus making enforcement

agencies choose between the violations and violators they proceed against.

Finally, private class action lawsuits hardly seem to be the proper way for such a narrow issue of regulatory practice to be resolved.

In conclusion, the CPUC would request that the FCC protect consumers by granting the Joint Petition of the above listed Petitioners to issue a Notice of Proposed Rulemaking (or Further Notice of Proposed Rulemaking) on the issue of whether it is appropriate to establish minimum notice requirements for recently detariffed interstate long distance toll services.

Respectfully submitted,  
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